IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 213 of 1992

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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BALDEVSINH TARASINH &4 - Applicant(s)

Versus

HARIBHAI R.PARMAR - Opponent(s)

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Appearance :

MR RM RUPAREL for Petitioner No(s).: 2,3,4.
MR PM THAKKAR for Respondent No(s).: 1.

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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 21/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 30th October, 1991 passed by the learned Joint District Judge, Ahmedabad (Rural) in Civil Revision Application No.7 of 1989, the petitioner-tenant has preferred

the present Revision Application under section 29 of the Bombay Rents, Hotel &Lodging House Rates Control Act; 1947 (herein after referred as “the Rent Act”)

The Present Revision Application under Section 29(2) of the Rent Act against the order made by the lower appellate Court under Section 29(3) of the Rent Act shall not be maintainable. This Revision Application is, therefore, treated as Application under Section 115 CPC.

The petitioner-defendant was the tenant in the suit premises situated at Jantanagar, Ramol, District: Ahmedabad for a monthly rent of Rs.200/-. The respondent-landlord instituted H.R.P. Civil Suit No.347 of 1988 in the Court of learned Civil Judge (J.D.), Ahmedabad (Rural) for recovery of possession of the suit premises on the ground that, the defendant was a tenant in default; and that he was not ready and willing to pay the rent. *I*n answer to the summons issued by the court, after first couple of dates the defendant did not appear before the Court and continually remained absent since 8th July, 1988. The suit was proceeded ex-parte against the defendant. The defendant was found to be in arrears of rent since 1st April, 1983. He did not pay the amount of rent due within one month from the date of the receipt of the notice of demand given under Section 12(2) of the Rent Act. Pending the suit also, he did not deposit the amount of rent due or the monthly rent in the Court. The learned Civil Judge, by order dated 20th July, 1988, allowed the suit and passed decree for eviction against the defendant.

Feeling aggrieved, the defendant moved Revision Application No.137 of 1989 before the learned Civil Judge for setting aside the ex-parte decree for eviction passed against the defendant. The said Application came to be rejected on 30th August, 1989. Feeling aggrieved, the defendant preferred Civil Revision Application No. 7 of 1989 in the

Court of learned District Judge, Ahmedabad (Rural). The said Application came to be dismissed by the learned Joint District Judge. Therefore, the present Revision Application.

This Revision Application was admitted to final hearing by order dated 24th March, 1992 (Coram: R.K.Abhichandani, J.). The Court was pleased to make order as under :-

"**Rule. Interim relief against the Execution of the decree against the petitioner on the condition that petitioner shall deposit all the arrears of rent payable by him within six months from today and on a further condition that he shall continue to regularly pay the rent of the suit premises.**"

As the petitioner had failed to comply with the aforesaid conditions imposed upon him, the respondent-plaintiff moved Civil Application No.4046 of 1992 for vacation of interim relief. The said Application came to be allowed on 2nd December, 1994 (Coram: N.J.Pandya, J.). I am informed that since vacation of the interim relief by the above order dated 2nd December, 1994, the decree for eviction passed against the defendant has been executed.

On perusal of the statement filed in this Revision Application, it appears that on 31stJanuary, 1989, the defendant was in arrears of rent to the extent of Rs. 22,738.15 ps. Pending the Revision Application before the lower Court, the defendant had made deposits to the extent of Rs.6660/-. On the date of this Revision Application, the defendant was in arrears of rent to the extent of Rs.16,078.15 ps. As recorded hereinabove, pending this Revision Application also the defendant did not pay the amount of rent due or the monthly rent.

Before the learned Civil Judge, the defendant had comeout with an excuse that he could not remain present before the Court on account of sickness of his wife and that she was convalesing at Delhi. However, it was found that the excuse made by the defendant was not genuine. In fact, during the relevant period, he was present in Ahmedabad and he had also attended some Criminal matter before the Metropolitan Magistrate on several days. Thus, the plea of the defendant was found to be false.

In view of the falsehood of the defendant and the fact that the defendant was in arrears of rent since 1st January, 1983 and the fact that inspite of the direction issued by this Court the defendant did not pay the amount of rent due or the monthly rent as and when it became due, no interference is warranted. The Revision Application is dismissed with cost. Rule is discharged.

(Miss. R.M.DOSHIT, J.)

kdc.